

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH.

Crl. Revision No.134 of 1998  
Decided on 15. 9.2009.

**Mohan Chand Joshi**

**..... Petitioner.**

**Versus**

**State ( U.T.Chandigarh )**

**..... Respondent.**

**Crl. Revision No.135 of 1998**

**Mohan Chand Joshi**

**..... Petitioner.**

**Versus**

**State ( U.T.Chandigarh )**

**..... Respondent.**

**CORAM:- HON'BLE MR. JUSTICE K.C. PURI**

Present : Mr. Gurinder Pal Singh, Advocate for the revisionist  
in both cases.  
Mr. Rajeev Sharma, Advocate for U.T.Chandigarh  
in both cases.

**K.C.PURI, J.**

By this common order, I intend to dispose of Criminal

Revision No.134 of 1998 titled **Mohan Chand Joshi vs. State ( U.T.Chandigarh )** and Criminal Revision No.135 of 1998 titled **Mohan Chand Joshi vs. State ( U.T.Chandigarh )** , as both the revisions arise from the same FIR and against the same accused. For convenience, facts are being taken from Criminal Revision No.134 of 1998.

These are two revision petitions against the judgment dated 18.12.1997 passed by Shri S.S.Lamba, Additional Sessions Judge, Chandigarh, who dismissed the appeal, while reducing the sentence of imprisonment awarded by the trial Court from two years rigorous imprisonment to one year rigorous imprisonment and by maintaining the amount of fine as Rs.1000/-, whereas Shri J.S.Khushdil, learned Judicial Magistrate Ist Class, Chandigarh vide judgment and order dated 17.5.1986 sentenced the revisionist to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/- and in default of payment of fine to undergo rigorous impressment for three months holding him guilty under Section 409 of the Indian Penal Code (in short – the IPC).

The brief facts of the prosecution case are that on the complaint made by Chief Executive Officer, Haryana State Federation of Consumer Cooperative Whole Sale Stores,( in short – the Federation) against the revisionist. It is alleged in the complaint that revisionist was appointed as salesman in this Federation on 1.10.1973 and he took over the charge of the stocks of retail shop on 1.10.1973. The normal duties of a salesman were to receive goods

from the main godown through an indent duly signed by him and the godown keeper after due checking and satisfaction and to sell the same in retail at his shop at the rates and in accordance with the policy approved by the Federation. After the close of the day, the revisionist was required to prepare the sales summaries of the sales made during the day and to hand over the sales proceeds of the day to the cashier of the Federation against receipt. He was also responsible for stocking, selling custody and accountability of the goods given to him by the Federation from time to time. The financial transactions of the goods supplied to him and the sales duly made by him were kept by the office of the Federation in a register called as Stock Liability Register. The entries made in this register by the office were also signed by the salesman in token of having accepted the liability from time to time. The revisionist was also supposed to conducted physical verification in the presence of the salesman and the list of goods physically verified is signed by the auditors as well as by the salesman in token of its correctness. According to physical verification report for the period ending 31.12.1975 the value of goods in the custody of Mohan Chand, salesman, amounted to Rs.88,119.53ps. This was taken as opening balance of stocks with the salesman from 1.1.1976. The value of goods given to the sales from 1.1.1976 to 3.2.1976 as well as sales affected by him and the amount deposited with the Federation. As per physical verification of the stocks in the charge of revisionist for the period ending 30.6.1975 and 31.12.1975 heavy shortages were found in the stocks entrusted

to him in the capacity of a salesman. The revisionist was therefore, asked to hand over the charge of his stocks to Ram Lal Godown Keeper and the same was handed over the charge of stocks worth Rs.58,672-73ps to Ram Lal Storekeeper on 3.2.1976 whereas according to the stock liability register, the value of goods in his charge as on 3.2.1976 should have been Rs.67,397-20ps. There was thus a shortage of stock duly entrusted to him in the capacity of a salesman worth Rs.8724-47ps. which revisionist has embezzled. The investigation of this case was conducted by SI Brij Lal, who took into possession necessary documents and recorded the statements of the prosecution witnesses. After completion of necessary investigation, challan against the revisionist was presented in the trial Court for trial.

On appearance of the accused in the Court, copies of the documents were supplied to the accused under rules.

Finding a prima facie case, the accused was charge-sheeted under Section 409 IPC to which he pleaded not guilty and claimed trial.

In order to establish its case, prosecution has examined Vijay Kumar (PW-1), Sudama Mool Chandani (PW-2), Om Parkash (PW2/B), Jagdish Chander (PW-3), Ramesh Chander (PW-4), Subash Chander Jain (PW-5), K.N.Parshad (PW-6), Om Parkash (PW-7), Mohinder Singh (PW-8), SI Brij Lal (PW-9), SI Nana Ram (PW-10), K.K.Sharma (PW-11), Ram Lal (PW-12), Shri J.P.Gupta (PW-13), SI Sandel Singh (PW-14) and Nanak Singh (PW-15) and

the evidence was closed by order of the Court as the prosecution failed to conclude its entire evidence.

After conclusion of the trial, the accused was examined under Section 313 Cr.P.C., all the incriminating evidence was put to him which he denied and pleaded his false implication. He has admitted that he was working as Salesman. He has also admitted that the goods were received from the CONFED Store through indent, and after that those were put on sale. He has admitted that the entries were made by the storekeeper and his signatures were obtained. He has stated that the original liability register has been intentionally concealed by the prosecution, just to prosecute him. He has stated that the signatures on the liability register were obtained under pressure and undue influence. The accused has examined Sher Singh as DW-1 and Suresh Kumar as DW-2 and then close his defence evidence.

The learned trial Court, after appraisal of the evidence, found the accused guilty and sentenced him as narrated above. The revisionist filed appeal against that judgment. The appellate Court on re-appraisal of the evidence did not find any merit in the appeal and dismissed the same, however, while reducing the sentence from two years to one year only.

Still dis-satisfied with the aforesaid judgments and orders the accused/revisionist filed instant revision petition before this Court.

I have heard learned counsel for the revisionist and

learned State counsel and have gone through the records of the case.

Learned counsel for the revisionist has submitted that primary evidence of embezzlement is missing in the present case. The liability register, which reflected all the entries in respect of issuance of articles to the salesman are incorporated in the liability register. The original liability register has been withheld by the prosecution on the ground that there were cuttings in the entries in that register. The new liability register was prepared. The signatures against the entries were taken by the Officers under the threat. Even some of the entries do not bear the signatures of petitioner. Since the primary evidence is missing and as such the prosecution has failed to prove the alleged embezzlement.

I have considered the said submission and have gone through the records of the case.

Both the Courts below have thrashed this point and reached to the conclusion that preparation of new liability register does not create doubt on the prosecution version. Signatures of revisionist appear on all the entries except one or two entries in respect of issuance of articles. Even if, the entries, which did not bear the signatures of revisionist, ignored in that case also the embezzlement stood proved. Moreover, in this case, the primary evidence is not the liability register but the primary evidence is in the shape of issuance of indent for sale of articles by the petitioner, who happened to be salesman at that time. The revisionist has failed to

count for the articles issued to him through indents and there were shortage, as observed by both the Courts below. So, no scope for interference in the present revision petition is made out.

The learned counsel for the petitioner has further submitted that revisionist filed complaint against the other officers, who have actually embezzled the amount. The learned Judicial Magistrate Ist Class, has not reached to the logical conclusion as provided under Section 202 of the Code of Criminal Procedure. The big guns have been shielded to make the petitioner scape goat.

I have carefully considered the said submission but do not find any force in that submission. In case the Judicial Magistrate Ist Class, has not taken the cognizance, the petitioner would have the remedy by filing a private complaint but he has not done so. So, now after so many years, the petitioner cannot grumbled over the said matter.

Learned counsel for the revisionist has further submitted that some time the goods were taken by the higher officers on credit basis. The petitioner being a small employee could not say no to the officers and helm of the affair.

Both the Courts below have not considered this aspect.

I have carefully considered the said submission but do not find force in that. The goods alleged to be given on credit although not proved but according to the petitioner itself the value of the same is very less i.e Rs.800/-. Even if, some officers have taken the goods on credit in that case, the petitioner was required to

issue the bills and get the signature of that officers. But, there is nothing in this case on the file. So, the above said argument is also without any substance.

Learned counsel for the revisionist has further submitted that the petitioner has been discriminated. According to the policy of the department, the salesman was entitled to have a shortage of half meter per every than of cloth. This concession is allowed to the employee as the same extra cloth has to be given to the person, who purchased the same.

The said concession has been withheld in the case of petitioner regarding shortage on account of embezzlement.

I have carefully considered the said submission but do not find any merit in that submission.

Even if, concession of shortage by half meter is allowed to the petitioner in that case also the huge shortage of articles would not be accounted for. The shortage can be in respect of the clothes only. So far as other items such as tyres are concerned there cannot be shortage in respect of those items. So, the petitioner cannot have benefit of the above said argument.

Learned counsel for the revisionist has submitted that there is overwriting in some of the indents, the benefit of the same has not been given to the petitioner.

I have carefully considered the said submission but do not find any merit in that submission.

No specific act of overwriting prejudicial to the petitioner



has been pointed out during the course of arguments.

The learned counsel for the petitioner has submitted that in para-5 of the grounds of revision the petitioner has given the details in respect of shortage of value of Rs.82,686.58ps. against the shortage of Rs.88,119.53ps if these six items are taken into account, there is no shortage.

I have carefully considered the said submission but do not find any merit in that submission.

No reasonable ground for arriving at the conclusion that shortage of the stock is counted for as detailed in para-5 of the grounds of appeal. These figures have been made by the petitioner for the first time in the revision petition, which cannot be looked into. The trial Court has appreciated the evidence on the record of this case minutely. The first Appellate Court re-perused the said evidence carefully and no scope is left for interference in the concurrent finding of both the Courts below proving guilt of the petitioner.

Consequently, the conviction recorded by both the Courts below stand affirmed.

So far as quantum of sentence is concerned, the shortage relates to the period 1974-76 i.e. more than 33 years. The petitioner is facing the protracted trial since the year 1982 i.e. more than 27 years.

Learned counsel for the petitioner has stated at the bar that the petitioner has undergone incarceration for a period of 70 days out of substantive sentence of one year. It would not be in the

interest of justice to send the revisionist to custody, who has been facing the agony of trial for the last 27 years and had also undergone incarceration of 70 days.

Consequently, the sentence is reduced to the already undergone by him. However, the sentence of fine under Section 409 IPC is enhanced to Rs.3000/-.

With the above said modification in the sentence, the revision petition stands disposed of.

A copy of this judgment be sent to the trial Court for strict compliance.

**( K.C.PURI )  
JUDGE**

**September 15, 2009  
sv**